

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

MATTHEW THOMPSON,

Plaintiff,

v.

CASE NO. 4:14cv465-RH/GRJ

B. SMITH et al.,

Defendants.

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**ORDER DISMISSING THE SECOND
AMENDED COMPLAINT IN PART**

This is a prisoner civil-rights case. In the second amended complaint, the plaintiff Matthew Thompson asserts that he filed grievances and that in response, three correctional officials, the defendants Bruce Smith, James Sikes, and D. Price, retaliated against Mr. Thompson. The second amended complaint alleges that the retaliation included spraying Mr. Thompson with chemical agents. The second amended complaint alleges that either Mr. Smith or Mr. Sikes carried out the spraying.

Mr. Thompson asserts violations of the First and Eighth Amendments. He asserts claims under 42 U.S.C. § 1983 against Mr. Smith, Mr. Sikes, Mr. Price, and

another correctional officer, the defendant D. Atkins. The defendants have moved to dismiss.

The motion is before the court on the magistrate judge's report and recommendation, ECF No. 54. No objections have been filed.

Spraying a prisoner with chemical agents—presumably oleoresin capsicum—without cause violates the Eighth Amendment. When the spraying is done to retaliate for conduct protected by the First Amendment, including filing grievances, the spraying violates the First Amendment. The report and recommendation concludes that the second amended complaint does not adequately allege that the spraying caused physical injury to Mr. Thompson, but the very reason that officers are equipped with chemicals is that their application causes substantial physical discomfort. The First and Eighth Amendment claims against Mr. Smith and Mr. Sikes, including the demand for damages, may go forward. For the reasons set out in the report and recommendation, the First Amendment claim against Mr. Price also may go forward.

The report and recommendation correctly concludes that the claims against Mr. Atkins must be dismissed.

For these reasons and, to the extent consistent with this order, the reasons set out at greater length in the report and recommendation,

IT IS ORDERED:

1. The report and recommendation is accepted in part.

2. The motion to dismiss the second amended complaint, ECF No. 47, is granted in part and denied in part. The claims against Mr. Atkins are dismissed with prejudice. The First Amendment retaliation claims against Mr. Smith, Mr. Sikes, and Mr. Price are not dismissed. The First Amendment access-to-courts claim, as asserted separately from the retaliation claim, is dismissed. The Eighth Amendment chemical-agents claims against Mr. Smith and Mr. Sikes are not dismissed. The First and Eighth Amendment claims are narrowed in accordance with the report and recommendation and this order.

3. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b).

SO ORDERED on November 25, 2016.

s/Robert L. Hinkle
United States District Judge